

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

CLIFFORD MYERS,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-10-334-D
)	
LEWIS HAWKINS, <i>et al.</i>)	
)	
Defendants.)	

ORDER

This matter is before the Court for review of the Report and Recommendation issued by United States Magistrate Judge Bana Roberts pursuant to 28 U.S.C. § 636(b)(1)(B)-(C). After a thorough and comprehensive analysis of the issues, Judge Roberts recommends that summary judgment be entered in favor of all remaining defendants in this action under 42 U.S.C. § 1983.¹

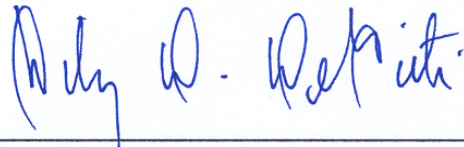
Plaintiff has not filed a timely objection to the Report nor requested additional time to object, although he was expressly advised by Judge Roberts of his right to object, the procedure and deadline for filing an objection, and the consequences of failing to object. The Court notes from the case record that Plaintiff's mail containing a copy of the Report was returned as undeliverable on April 4, 2011. Nevertheless, the Court finds that any failure to receive the Report does not provide a basis for an exception to the court of appeals' "firm waiver rule" because Plaintiff was responsible for giving notice of any change of address. *See Theede v. United States Dep't of Labor*, 172 F.3d 1262, 1267-68 (10th Cir. 1999) (*pro se* plaintiff who failed to provide any change of address or address correction waived right to review by failing to make a timely objection); *see also* W.D.

¹ Defendant Lewis Hawkins was sued in his official capacity as the sheriff of Canadian County and, because he no longer occupies that position, was replaced by substitution. *See* Order 9/2/10 [Doc. No. 33]. Also, at Plaintiff's request, persons identified in the Complaint as Sergeant Nold, Sergeant Johnston, and Doctor Holly Vladimir were dropped as defendants. *See* Order 11/3/10 [Doc. No. 45].

Okla. R. LCvR5.4(a) (requiring written notice of a change of address). Therefore, the Court finds that Plaintiff has waived further review of the issues addressed in the Report. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991); *see also United States v. 2121 East 30th Street*, 73 F.3d 1057, 1060 (10th Cir. 1996).

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 60] is ADOPTED in its entirety. Defendants' Motion to Dismiss or in the Alternative Motion for Summary Judgment [Doc. No. 35] is GRANTED. Judgment shall be entered accordingly.

IT IS SO ORDERED this 22nd day of April, 2011.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE